

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, for
the use and benefit of JAMES
TALCOTT CONSTRUCTION INC., a
Montana Corporation,

Plaintiff/Counter-Defendant,

v.

GARCO CONSTRUCTION, INC., a
Washington Corporation, and
TRAVELERS CASUALTY &
SURETY CO. OF AMERICA, a
Connecticut Corporation,

Defendants/Counter-Claimants.

NO: 2:10-CV-0131-TOR

SECOND AMENDED BENCH TRIAL
SCHEDULING ORDER

BEFORE THE COURT is the parties' Stipulated Motion to Continue Trial and Pretrial Deadlines and to Allow Filing of Second Amended Complaint. ECF No. 99. The motion was submitted for consideration without oral argument. The Court has reviewed the file and the records contained therein and is fully informed.

1 This matter is currently scheduled for a bench trial on March 2, 2020. The
2 parties jointly move the Court to continue the trial date to June 8, 2020, and adjust
3 the interim dates and deadlines accordingly, to allow them the necessary time to
4 conduct discovery, and prepare for motions hearings and trial. Pursuant to the
5 parties' stipulations and for good cause shown, the motion is granted and the
6 Amended Bench Trial Scheduling Order (ECF No. 94) is amended as follows:

7 **5. Rule 26(a)(2) Expert Identification and Reports**

8 The parties are cautioned that failure to timely identify experts or provide
9 reports in accordance with Rule 26 and this scheduling order may result in
10 exclusion of such testimony absent good reason. *See Wong v. Regents of the Univ.*
11 *of Cal.*, 410 F.3d 1052 (9th Cir. 2005).

12 The parties shall identify their experts and serve those experts' Rule 26(a)(2)
13 reports on all other parties no later than **November 14, 2019**. The parties shall also
14 provide dates for which their experts can be available for deposition.

15 The parties shall identify their rebuttal experts and serve those experts' Rule
16 26(a)(2) reports on all other parties no later than **January 17, 2020**. The parties
17 shall also provide dates for which their experts can be available for deposition.

1 **6. Discovery Cutoff**

2 **A. Generally**

3 Fact discovery shall be completed by **December 3, 2019** (“Discovery
4 Cutoff”); expert discovery for depositions shall be completed by **February 17,**
5 **2020**. To be timely, discovery requests must be served sufficiently in advance of
6 the deadline to allow for timely response by the cutoff date. The parties shall not
7 file discovery, except those portions necessary to support motions or objections.

8 **B. Depositions, Interrogatories, Requests for**
9 **Production/Admission**

10 Unless otherwise stipulated, no more than 10 depositions up to seven hours
11 long, may be taken by the plaintiffs, or by the defendants, or by third-party
12 defendants. Fed. R. Civ. P. 30(a)(2)(A) and (d)(1).

13 Unless otherwise stipulated, any one party may serve no more than 25 written
14 interrogatories, including discrete subparts, on any other party. Fed. R. Civ. P.
15 33(a)(1) and advisory committee notes (1993) explaining “discrete subparts”.

16 Unless otherwise stipulated, any one party may serve no more than 30
17 requests for production, including discrete subparts, on any other party. LCivR
18 34(d).

19 Unless otherwise stipulated, any one party may serve no more than 15
20 requests for admission, including discrete subparts, on any other party. LCivR
36(c).

1 A party needing relief from these limitations should timely seek relief from
2 the Court by motion.

3 **C. Protective Orders**

4 Any stipulation or motion for a confidentiality agreement or protective order
5 must be timely filed so as not to delay the discovery process or the Court's
6 deadlines. If confidential records are attached to court filings, "compelling
7 reasons" must be shown to seal records attached to a dispositive motion and "good
8 cause" must be shown to seal records attached to a non-dispositive motion.
9 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-80 (9th Cir.
10 2006).

11 **D. Motions to Compel**

12 To avoid wasted time and expense, counsel may contact chambers to schedule
13 a telephonic conference to obtain an expedited ruling on discovery disputes.
14 Motions to compel seeking sanctions shall be filed in writing.

15 **7. Dispositive and *Daubert* Motions**

16 All dispositive and *Daubert* motions shall be filed on or before **March 10,**
17 **2020.** Responses and replies to dispositive and *Daubert* motions shall comply with
18 LCivR 7. No supplemental responses or supplemental replies to any dispositive or
19 *Daubert* motion may be filed without Court permission.
20

1 Dispositive and *Daubert* motions shall be noted for hearing at least **fifty (50)**
2 **days** after the date of filing.

3 **8. Motion Practice**

4 **A. Notice of Hearing**

5 Parties are to comply with LCivR 7(i) when noting motions for hearing. If
6 oral argument is sought by a party, counsel shall confer and determine an agreeable
7 hearing date and time, and then contact chambers to confirm the Court's
8 availability for the desired hearing date and time. All non-dispositive motion
9 hearings shall be conducted telephonically, unless in-person argument is approved
10 by the Court. Counsel shall not use speaker or cellular phones during any
11 telephonic hearing. Dispositive motion hearings in which oral argument has been
12 requested will be set for in-person appearance.

13 **B. Motions to Expedite**

14 If there is a need to have a motion heard on an expedited basis, the party must
15 file a motion for expedited hearing and an accompanying memorandum (or
16 declaration) establishing the need for an expedited hearing. The motion for
17 expedited hearing shall be noted for hearing, without oral argument, no earlier than
18 two (2) days after the filing of the motion, absent good cause shown. Pursuant to
19 local rule, motions may not be noted for hearing for the same day they are filed.
20

1 **C. Citing Previously-Filed Documents**

2 All references to a previously filed document shall cite to the electronic case
3 filing (ECF) record number and page number within that ECF record, in the
4 following format, “ECF No. ____ at ____.” Such documents shall not be attached as
5 exhibits.

6 **D. Reliance on Deposition Testimony**

7 When a party relies on deposition testimony to support a position it takes in
8 support or opposition to an issue, that party shall provide the Court with the
9 pertinent excerpts of the deposition testimony relied upon and shall cite to page
10 and line numbers of the deposition it believes supports its position. *See generally*
11 *LCivR 56(c)*. Submission of the entire deposition and/or failure to cite to specific
12 portions of the deposition may result in the submission being stricken from the
13 record. *See Orr v. Bank of America*, 285 F.3d 764, 774-75 (9th Cir. 2002).

14 **E. Supplemental Responses or Replies**

15 No supplemental responses or supplemental replies to any motion may be
16 filed unless the Court grants a motion to file such documents.

17 **F. Motions to Reconsider**

18 Motions to reconsider are disfavored. Motions must show manifest error in
19 the prior ruling or reveal new facts or legal authority which could not have been
20 brought to the Court’s attention earlier. The motion shall be noted for expedited

1 hearing without oral argument seven days after it is filed. No response to a motion
2 for reconsideration need be filed unless requested by the Court. No motion for
3 reconsideration will be granted without such a request by the Court.

4 **G. Decisions on Motions**

5 The parties may call chambers to inquire about the status of a decision on a
6 motion if the Court has not issued an order within thirty **(30) days after** the
7 hearing on a motion.

8 **9. Witness/Exhibit Lists**

9 Witness/Exhibit lists shall be filed and served and exhibits made available for
10 inspection or copies provided to the parties on or before **April 28, 2020**.

11 **A. Witness Lists**

12 Witness lists shall include a brief description of the witness, a brief summary
13 of the witness' anticipated testimony, whether the witness will be called as an
14 expert, and any known trial date/time conflicts the witness may have.

15 **B. Exhibit Lists**

16 Exhibit lists shall include a brief description of the exhibit. All exhibits shall
17 be pre-marked; Plaintiffs' exhibits shall be numbered 1-499; Defendants' exhibits
18 shall be numbered 500-999. Exhibits should be marked in the lower left corner of
19 the exhibit if practicable.
20

1 **C. Objections**

2 Objections to witnesses/exhibits shall be filed and served on or before **May**
3 **5, 2020**, AND SHALL BE HEARD AT THE PRETRIAL CONFERENCE. All
4 objections to witnesses shall set forth a legal basis and explanation for the
5 objection. Objections to an exhibit or portion thereof, shall be accompanied by a
6 full and complete copy of the exhibit in question and a short legal explanation for
7 the objection. The party seeking the admission of the witness or exhibit has five
8 (5) days, excluding federal holidays and weekends, to file a response to the
9 opposing party's objection; no reply shall be filed.

10 **10. Deposition Designations**

11 **A. Generally**

12 Designation of substantive, as opposed to impeachment, deposition or prior
13 testimony to be used at trial shall be highlighted in yellow by Plaintiff or in blue by
14 Defendant in a complete transcript of the deposition or prior testimony and served
15 but not filed on or before **April 28, 2020**.

16 **B. Cross-Designations**

17 Cross-designations shall be highlighted in yellow by Plaintiff or in blue by
18 Defendant in the transcript containing the opposing party's initial designations and
19 shall be served but not filed on or before **May 5, 2020**.

1 **11. Motions in Limine**

2 All unresolved substantive or evidentiary issues that may foreseeably arise
3 during trial shall be addressed by motions in limine to be filed and served on or
4 before **May 5, 2020**. Responses to motions in limine shall be filed and served on
5 or before **May 12, 2020**. Such motions will be addressed and resolved at the
6 pretrial conference. However, motions in limine may not reargue issues already
7 decided by the Court.

8 **12. Pretrial Order**

9 **A. Generally**

10 A joint proposed pretrial order prepared in accordance with LCivR 16(e) shall
11 be filed on or before **May 15, 2020**, and a copy e-mailed, in Microsoft Word
12 format, to “riceorders@waed.uscourts.gov”.

13 **B. Exhibit List**

14 The list of exhibits contained in the Joint Proposed Pretrial Order shall reflect
15 the exhibit marking scheme described above. In preparing the Joint Proposed
16 Pretrial Order, the parties shall confer regarding duplicative exhibits and determine
17 which party will submit such exhibits for trial.

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20 //

1 **13. Pretrial Conference**

2 An **in-person** pretrial conference will be held on **May 28, 2020, at 9:00 a.m.**,
3 in Spokane, Washington. All counsel trying the case must be present at the pretrial
4 conference.

5 **14. Trial Briefs**

6 **A. Generally**

7 Trial briefs shall be filed and served on or before **May 18, 2020**.

8 **B. Length**

9 Trial briefs shall not exceed twenty (20) pages without prior court approval.
10 To obtain court approval, a party must file a motion to file an over-length brief,
11 demonstrating good cause why supplemental briefing is necessary.

12 **15. Trial**

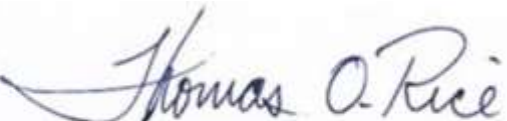
13 The bench trial shall commence on **June 8, 2020, at 8:30 a.m.**, in Spokane,
14 Washington.

15 **IT IS SO ORDERED.**

16 The District Court Clerk is directed to enter this Order and provide copies to
17 counsel.

18 DATED August 1, 2019.




THOMAS O. RICE
Chief United States District Judge